IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

GSTR No.43 of 1991
Date of decision: 5.9.2006

Excise and Taxation Commissioner,Punjab

....Petitioner

versus

Food Corporation of India, Ferozepur

.....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Amol Rattan Singh, Addl.AG Pb. for the State.
Mr. KL Goel, Advocate for the respondent.

JUDGMENT:

Following questions of law have been referred for opinion of this court by the Sales Tax Tribunal, Punjab, Chandigarh, arising out of its order dated 16.10.1989, in respect of assessment year 1975-76:-

"i) Whether the purchase/sales of rice to the Food Corporation of India from the Food and Civil Supply Department, Punjab are covered under the Punjab Rice Procurement levy Order 1958?

ii) Whether the decision of the Punjab and Haryana High Court in 38 STC 144 is applicable to the present case, keeping in view the facts and circumstances of case?

iii)Whether the subsequent transactions of rice between Food and Civil Supplies Department, Punjab to the Food Corporation of India after its procurement from the Local

agencies under the Punjab Rice Procurement Levy order, 1959 is Purchase/Sale or not?"

The assessee is a registered dealer under the provisions of the Punjab General Sales Tax Act, 1948 (for short, 'the Act') and is dealing in food-grains, rice and paddy etc. The assessing authority finalised assessment for the assessment year 1975-76. The revisional authority revised the order of assessment and created an additional demand. The assessee preferred a revision which was dismissed by the Tribunal.

We find that the questions stand answered against the assessee and in favour of the revenue by judgment of the Hon'ble Supreme Court in **Food Corporation of India etc. v. State of Kerala** AIR 1997 Supreme Court 1252 = 105 STC 4, wherein it was observed:-

"**29.** We, therefore, answer the principal common point holding that the levy procurement is a sale/purchase and therefore, falls within the purview of Entry 54 list is of Seventh Schedule to the Constitution. The States were competent to levy sales/purchase tax on such transactions. In the light of the rulings of this Court referred to above in detail, we are unable to agree with the submission of the learned Senior Counsel for the appellants that there was no area left for consensual agreement in the parties to the procurement transactions. The view taken by the Full Bench of the Allahabad High Court in, Ram Bilas Ram Gopal case, (AIR 1970 All 518), is the correct view and the High Court of Allahabad (Lucknow Bench) was in applying the same in the judgment under appeal. We also hold that the view of the Punjab and Haryana High Court challenged before us in some of these cases taking a different view does not lay down the correct law. To put the matter beyond controversy, we hold, with respect, that the decision in, Chitter Mal's case, (AIR 1970 SC 2000), is no longer good law in the light of later larger Bench decisions of

this Court referred to above."

In view of the above, the question is answered against the assessee and in favour of the revenue.

(Adarsh Kumar Goel)
Judge

Sept. 5, 2006 (Rajesh Bindal)
'gs' Judge